ATTACHMENT 1

In re National Prescription Opiate Litigation: MDL 2804 Track Three

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF DR. KATHERINE KEYES

Summary Sheet of Concise Issues Raised

Motion: Defendants' Motion to Exclude Certain Opinions and Testimony of Dr. Katherine Keyes (Doc. #: 3858)

Concise Description of the Issues:

The Court should not exclude Dr. Keyes' analysis of the epidemiological evidence that marketing expands the supply of opioids. Although the Court excluded certain marketing causation opinions in CT1, the record before the Court now is substantially different from the record in CT1, and the analysis performed by Dr. Keyes is more robust and firmly grounded in her epidemiological expertise. As shown in her report, in this case, Dr. Keyes analyzed an extensive body of literature that has consistently found a relationship between opioid marketing and the supply of opioids and applied the Hill factors widely accepted by epidemiologists as being the gold standard for analyzing causation. Defendants' argument that the Court should either exclude or offer a limiting instruction about any opinions Dr. Keyes might offer about specific marketing by the Defendants is refuted by their concession that Dr. Keyes does not offer any such opinions.

The Court should also allow Dr. Keyes to testify about the causal relationship between prescription opioid use and synthetic opioid-related harms, as it did in CT1. The current record on this aspect of Dr. Keyes' opinions is even more robust than the record that was before the Court in CT1, where the Court found that Dr. Keyes' opinions had a methodologically reliable foundation. Defendants' arguments to the contrary simply rehash the arguments from CT1 that the Court rejected.

Furthermore, the Court should reject the Defendants' demand for a limiting instruction that factual causation may differ from legal causation. Tellingly, the Defendants do not cite a single case where a court excluded testimony with the language they object to here.